

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review)	
)	
New Albany-Floyd County)	File No. SLD-287615
Consolidated School Corporation)	
New Albany, Indiana)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: April 21, 2005

Released: April 22, 2005

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by New Albany-Floyd County Consolidated School Corporation, New Albany, Indiana (New Albany).¹ New Albany seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). For the reasons set forth below, we grant in part and deny in part New Albany's Request for Review and remand its application to SLD for further review consistent with this Order.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.² The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.³ In accordance with the Commission's rules, an applicant must file with SLD, for posting to its website, an FCC Form 470 requesting services.⁴ The applicant must wait 28 days before entering into an agreement

¹Letter from Roger E. Waley, New Albany-Floyd County Consolidated School Corporation, to Federal Communications Commission, filed August 19, 2002 (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. 54.719(c).

²47 C.F.R. §§ 54.502, 54.503.

³47 C.F.R. §§ 54.504, 54.511(c).

⁴See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

with a service provider for the requested services and submitting an FCC Form 471 requesting support for the services ordered by the applicant.⁵

3. New Albany posted an FCC Form 470 to SLD's website on March 4, 1999.⁶ After the 28-day period had passed, New Albany signed a three-year contract for telecommunications services.⁷ Almost three years later, New Albany signed and submitted a Funding Year 2002 Form 471 requesting discounts on the original contract and cited the Funding Year 1999 Form 470 as support.⁸ According to New Albany's application, the expiration date for its service contract was August 25, 2002, but service was to continue beyond the term of the contract on a month-to-month billing basis until New Albany could re-file for Funding Year 2003.⁹ SLD approved the request for funding, but reduced New Albany's funding commitment from \$10,080, the requested amount, to \$1,680, the prorated amount from July 1, 2002 to August 25, 2002.¹⁰ SLD determined that New Albany's funding commitment should be reduced to reflect the contract expiration date because program rules require applicants to post a new Form 470 for the period following the termination of a service contract.¹¹

4. New Albany filed the instant Request for Review explaining that it did not file a Form 470 for Funding Year 2002 because it relied on the Funding Year 1999 Form 470.¹² New Albany asserts that its contract is a qualified existing contract under program rules and therefore does not require a new Form 470.¹³ New Albany further argues that SLD did not explain that a new Form 470 would be required to cover the period following the expiration of the contract or that selecting the month-to-month term would jeopardize its funding request.¹⁴

5. After reviewing the record, we grant in part and deny in part New Albany's Request for Review. We conclude that New Albany's decision to continue service on a month-to-month billing basis after the contract expired does not relieve New Albany of the responsibility to comply with program rules for those services. As SLD noted, once a service contract expires, a new Form 470 must be filed and

⁵47 C.F.R. § 54.504(c); *see also* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁶*See* FCC Form 470, New Albany-Floyd County Consolidated School Corporation, posted March 4, 1999. The allowable contract date was April 1, 1999.

⁷*See* Request for Review, Exhibit 4. *See also* Service Agreement between Ameritech and New Albany-Floyd County Consolidated School Corporation, dated August 26, 1999.

⁸*See* FCC Form 471, New Albany-Floyd County Consolidated School Corporation, signed November 29, 2001.

⁹*See* Request for Review, Exhibit 4.

¹⁰Letter from Schools and Libraries Division, Universal Service Administrative Company, to Roger E. Waley, New Albany-Floyd County Consolidated School Corporation, dated April 24, 2002.

¹¹*Id.* *See also* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Roger E. Waley, New Albany-Floyd County Consolidated School Corporation, dated July 8, 2002 (Administrator's Decision on Appeal).

¹²Request for Review at 1-2.

¹³*Id.*

¹⁴*Id.*

posted on SLD's website for 28 days in order to be in compliance with the Commission's competitive bidding rules.¹⁵ Because New Albany did not file a Form 470 for services rendered after the expiration of the contract, it may not receive support for those services. We note, however, that the expiration date of New Albany's service contract is listed as August 25, 2002 in its application, but the contract for services shows that the actual date for end-of-service termination is March 9, 2003.¹⁶ In light of this, SLD should instead prorate New Albany's funding commitment from July 1, 2002, the beginning of Funding Year 2002, to March 9, 2003, the actual end-of-service date for the contract.

6. Further, with regard to New Albany's implication that it was misinformed by SLD, we have consistently noted in the past that where a party receives erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when relief is contrary to a rule.¹⁷ In light of the thousands of applications that SLD must review and process each year, it is administratively necessary to require an applicant to be responsible for providing complete and accurate information.¹⁸

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by New Albany-Floyd County Consolidated School Corporation on August 19, 2002, IS DENIED IN PART, AND GRANTED IN PART and REMANDED to SLD for further review consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Vickie S. Robinson
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁵ See Administrator's Decision on Appeal.

¹⁶ See Request for Review, Exhibit 4. New Albany's service began on March 10, 2000, and was to continue for a minimum of 36 months, which placed the termination date on March 9, 2003. *Id.*

¹⁷ See, e.g., *Request for Waiver by Ballard Community School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-268911, SLD-268909, SLD-266579, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 15981 (Com. Car. Bur. 2001).

¹⁸ See *Request for Review by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, 25612-13, para. 8 (Com. Car. Bur. 2000).